

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-147

MICHAEL D. MINGO,
APPELLANT
V.
STATE OF ARKANSAS,
APPELLEE

Opinion Delivered SEPTEMBER 3, 2008

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[NO. CR-2003-1168-B]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE,

AFFIRMED

SAM BIRD, Judge

Michael D. Mingo appeals the revocation of his suspended sentence for possession of cocaine and possession of drug paraphernalia. In his sole point on appeal, he contends that the State failed to prove by a preponderance of the evidence that he violated the terms and conditions of his suspended sentence. We disagree and affirm.

In order to revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. Ark. Code Ann. § 5-4-309(d) (Repl. 2006); *Wilcox v. State*, 99 Ark. App. 220, ___ S.W.3d ___ (2007). The State only has to show that appellant committed one violation of the conditions of his suspension in order to support a revocation. *Morgan v. State*, 73 Ark. App. 107, 42 S.W.3d 569 (2001). Where the alleged violation is a failure to make payments as ordered, the State has the burden of proving by a preponderance of the evidence

that the failure to pay was inexcusable; once the State has introduced evidence of nonpayment, the burden of going forward shifts to the defendant to offer some reasonable excuse for failing to pay. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988).

The terms and conditions of Mingo's suspended sentence required him to follow all laws and to pay fines, costs, and fees. In initial and amended petitions to revoke, the State alleged that Mingo had violated these conditions by failing to make payments as ordered and by committing new offenses.

State's Exhibit 1, the fines and court-cost registry, was introduced into evidence at the revocation hearing of October 17, 2007. Officer Robert Schibbelhut of the Fort Smith Police Department testified that, in the early morning of July 28, 2007, the driver of an Oldsmobile drove slowly toward a four-way stop "like he didn't want to" approach the officer. Schibbelhut went through the stop sign, circled back, and found that the car had disappeared. Officer Cort Williams testified that he located the Oldsmobile and led a six-to-seven block pursuit of it, which ended when the driver stopped, abandoned the car, and ran down an alleyway between 12th and 13th Streets. A ten-year-old girl jumped out of the passenger's side, screaming and crying. She did not appear to be hurt, so Officer Williams ran after the driver, who was a black male wearing a white shirt and blue jeans. Mingo was found a block away from the car, hiding in a dog kennel in the back of his girlfriend's house on 12th Street, and his young passenger was lying on a sofa in the home. Mingo matched Williams's description of the suspect, and the Oldsmobile was registered to Blanche and Michael Mingo.

Where the sufficiency of the evidence is challenged on appeal, the trial court's findings will be upheld unless they are clearly against the preponderance of the evidence. *Wilcox v. State, supra*. Because a determination of a preponderance of the evidence turns on questions of credibility and weight to be given to the testimony, we defer to the trial judge's superior position. *Wilcox v. State, supra*.

The police officers' testimony and circumstantial evidence support a finding that Mingo committed the offense of fleeing by driving the vehicle that they pursued and then by running away. Mingo did not object to the introduction of the registry, and he presented no excuse for his documented failure to pay fines. Thus, there was sufficient evidence to support a finding that Mingo violated conditions of his probation by fleeing and by failing to pay fines.

Affirmed.

PITTMAN, C.J., and GLADWIN, J., agree.